

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 111 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JASHODABEN MAFATLAL MODI

Versus

YOGESHWAR ICE INDUSTRIES

Appearance:

MR SANJAY A MEHTA for Petitioners

SERVED BY DS for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 12

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/02/96

ORAL JUDGEMENT

1. RULE. Though notice was served on respondents, no one
has appeared on behalf of respondents No. 1 to 11.

2. The petitioners plaintiffs were aggrieved as the Court
of Jt. Civil Judge (JD) Kalol, in the Civil Suit No. 377 of

1995 instituted by them, not only did not grant any ad interim relief against transfer and disposition of movable properties but also did not grant any relief for appointment of Court Commissioner to make a note and inventory of all movables lying in the factory premises. Surprisingly, the trial court issued notice on 30th December, 1995 to the defendants and made it returnable on 11th of January, 1996. The defendant No.2 appeared on service of the summons and filed pursis to the effect that he was the oldest partner of defendant No.1 firm and that rest of the partners of defendant No.1 firm were likely to dispose of the movable assets of the partnership firm and that he has no objection to the injunction as prayed for being granted and further that he has no objection to the Court Commissioner being appointed and the inventory of premises being undertaken. This fact was brought to the notice of the trial court by application on 11th of January, 1996 filed by the petitioners plaintiffs and despite this situation, the learned Joint Civil Judge (J.D.), Kalol Mr. V.D. Parmar passed absolutely unusual order stating that fresh notice to be issued to the defendants which was made returnable by his office on 25th January, 1996. In the application for injunction, serious allegations were made by the plaintiffs against the defendants and apprehension was shown that the defendants No. 1 to 11 will dispose of all movable properties of the partnership firm and that it was necessary to grant ad interim injunction and to appoint Court Commissioner. One of the defendants has appeared and supported the case of the plaintiffs. Despite this fact situation, the learned trial judge passed absolutely unusual order and did not grant any relief thereby permitting the defendants to dispose of all movable properties. Even, an order in the nature of appointment of Court Commissioner for the purpose of making inventory was also denied by the trial court. It was in this situation that this Civil Revision Application was filed by the plaintiffs and by my order dated 23rd January, 1996, I directed as under :

"Notice returnable on 26th of February, 1996. Ad interim injunction in terms of Para 7(B). P. Narayanan Nair, Stenographer attached to this Court is appointed as Court Commissioner to visit the factory and to make inventory of all stocks, immovable properties and movable assets, plant and machinery belonging to the first respondent firm lying and situated at the premises of M/s Yogeshwar Ice Industries, Plot No. 3526, Phase IV, G.I.D.C., Chhatral, Taluka Kalol, District Mehsana. Any one of the petitioner shall accompany him for the purpose of locating the premises for the purpose of carrying out the work of inventory. The Commissioner shall also

give prior notice to the respondent by Registered A.D. of the date and time as to when he will be going for inventory. Towards cost of the Court Commissioner, the petitioner shall deposit an amount of Rs. 3,000/(Rupees three thousand only) in this court within two days from today."

3. Subsequent to the order passed by this Court, the Court Commissioner was appointed, who has carried out the inspection of the factory premises and has submitted the report and from the report it becomes clear that number of articles and movables were lying in the factory premises, the details of which are given in the report prepared by the Court Commissioner.

4. The defendants though served have failed to appear excepting defendant No.12, namely, State Bank of India and Mr. P.G. Desai has appeared for respondent No.12 and states that the respondent No.12 has no objection to the injunction as prayed for being granted or to the Court Commissioner being appointed.

5. It is in this fact situation that it has become necessary for this Court to exercise the power which the trial court ought to have exercised. This Court fails to understand as to why Second Joint Civil Judge (JD), Kalol acted in absolutely arbitrary, illegal manner and in total disregard of the provision of Order 39 Rules 1 and 2 of the C.P. Code. In fact, he refused to exercise jurisdiction vested in him by law and thereby knowingly or unknowingly permitted the defendants to dispose of the movable properties. He was not at all alive to his judicial duties and therefore this court is required to pass the order of injunction on an application at Exhibit-5 as under which he ought to have passed.

"The defendants No. 1 to 11, their servants, agents are restrained by an order of injunction from disposing of, alienating, transferring, mortgaging, hypothecating or in any other manner whatsoever dealing with the movables like stocks, plant and machinery etc. and immovable properties belonging to the Respondents No. 1 to 11 and also from realising and depositing in any other bank except the 12th Respondent Bank the book debts recoverable by the first respondent firm from its debtors, till the dues of the 12th respondent Bank with respect to the credit facilities and term loan availed of by the first respondent firm are satisfied and/or repaid."

6. Such order of injunction is directly ordered to be served on defendants No. 1 to 11 by the present plaintiffs and also through this Court and Office is directed to issue such injunction. Such ad interim order of injunction shall

operate upto 30th June, 1996 and it will be open to the plaintiffs to approach the trial court, based on the report submitted by the Court Commissioner before this Court, to seal the premises and/or to take all necessary steps to see that the movable properties which are found by the Court Commissioner in the premises are not dealt with or disposed of by the defendants.

7. The Registrar is directed to place the copy of this Order before the Hon'ble the Acting Chief Justice as this Court feels that the learned Trial Judge has acted with oblique motive and appropriate action is required to be taken against him after calling explanation from him for his unusual order as stated hereinabove.

8. Rule is accordingly made absolute to the aforesaid extent only. There shall be no order as to costs.

9. The amount of Rs. 3,000/- which was ordered to be deposited in this Court towards cost of the Court Commissioner, is directed to be paid over to the Court Commissioner, P. Narayanan Nair, Private Secretary and the Registrar shall accordingly make the payment to the Court Commissioner.
